

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

DWAYNE LAMONT BURGESS,

No. 2:22-cv-00573-DAD-DMC (HC)

Petitioner,

v.

PEOPLE OF THE STATE OF
CALIFORNIA,

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
HABEAS PETITION

Respondent.

(Doc. Nos. 1, 8, 10, 11, 15, 17, 19)

Petitioner Dwayne Lamont Burgess is a state prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On September 14, 2022, the assigned magistrate judge issued findings and recommendations recommending that petitioner's federal habeas petition be summarily dismissed for lack of jurisdiction because “[p]etitioner appears to complain about the confiscation of money and/or property in the context of a state court criminal action,” and “[p]roperty-related claims are not within the scope of the writ of habeas corpus.” (Doc. No. 17 at 2.) The pending findings and recommendations were served upon petitioner and contained notice that any objections thereto were to be filed within fourteen (14) days after service. (*Id.* at 3.) On October 3, 2022, petitioner filed objections to the pending findings and recommendations. (Doc. No. 20.)

Petitioner's objections are rambling and difficult to decipher. Though not entirely clear, it appears that petitioner seeks to invoke "admiralty" jurisdiction in this court. (*Id.* at 3.) However, even if petitioner's property claims arise under admiralty and maritime law, they still cannot form the basis for any cognizable claim for federal habeas relief. As the magistrate judge explained in the pending findings and recommendations, federal habeas actions are brought by prisoners challenging the fact or duration of a state court conviction, not prisoners asserting property-related claims. (Doc. No. 17 at 2.) Accordingly, petitioner's objections provide no basis upon which to reject the pending findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, including petitioner's objections, the court concludes that the pending findings and recommendations are supported by the record and proper analysis.

Having concluded that the pending petition must be dismissed, the court also declines to issue a certificate of appealability. A petitioner seeking writ of habeas corpus has no absolute right to appeal; he may appeal only in limited circumstances. *See* 28 U.S.C. § 2253; *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003). If a court denies a petitioner's petition, the court may only issue a certificate of appealability when a petitioner makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). Where, as here, the court denies habeas relief on procedural grounds without reaching the underlying constitutional claims, the court should issue a certificate of appealability "if jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). In the present case, the court finds that reasonable jurists would not find the court's determination that the pending petition must be dismissed to be debatable or wrong. Thus, the court declines to issue a certificate of appealability.

Accordingly,

The findings and recommendations issued on September 14, 2022 (Doc. No. 17) are adopted in full;

- 1 2. The petition for writ of habeas corpus (Doc. No. 1) is dismissed;
- 2 3. Petitioner's pending motions and requests (Doc. Nos. 8, 10, 11, 15, 19) are denied
- 3 as having been rendered moot by this order;
- 4 4. The court declines to issue a certificate of appealability; and
- 5 5. The Clerk of the Court is directed to close this case.

6 IT IS SO ORDERED.

7 Dated: November 22, 2022

Dale A. Drayd
8 UNITED STATES DISTRICT JUDGE

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